

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KAREN M. SHELTON,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 98-1982
	:	
JENNY CRAIG INTERNATIONAL,	:	
LINDA DERBY SHIRE, and	:	
LORI SCHMIDT	:	
	:	
Defendant.	:	
	:	

MEMORANDUM

R.F. KELLY, J.

JUNE 3, 1998

Karen M. Shelton ("Plaintiff") has brought this employment discrimination action against her former employer, Jenny Craig International, and two supervisors, Linda Derbyshire and Lori Schmidt (collectively "Defendants"). On April 14, 1998, over a year after Plaintiff's complaint was filed, Defendants filed a Notice of Removal. Presently before this Court is Plaintiff's Motion to Remand. Because Plaintiff has failed to plead a federal claim, the Motion is granted and this matter is remanded to the Philadelphia Court of Common Pleas.

**I. FACTS.**

Plaintiff's complaint was filed in the Philadelphia Court of Common Pleas on May 6, 1997. The complaint alleged race discrimination/wrongful termination (Count I), breach of contract (Count II), and intentional infliction of emotional distress

(Count III). On April 17, 1998, Defendants removed this case to federal court on the basis of federal question jurisdiction. 28 U.S.C. § 1331. Defendants claim to have received notice of Plaintiff's federal claim on April 1, 1998, when, in Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff stated in a footnote that she intended to seek "recovery under both state and federal statutes." Plt.'s Reply to Defs.' Resp. to Mot. to Remand at 2. Thus, Defendants claim their removal was timely. 28 U.S.C. § 1446(b).

Plaintiff seeks to have this case remanded to state court arguing that Defendants had notice of the federal claim at least 30 days before prior to removal. 28 U.S.C. § 1446(b). Plaintiff claims to have notified Defendants of her intent to state a claim under Title VII through the complaint, through dual filing with the Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission, through the EEOC right to sue letter and through a Settlement Memorandum.

## **II. STANDARD.**

An action filed in state court can be removed to federal court by the Defendant if all the elements of federal jurisdiction are present. 28 U.S.C. § 1446. Removal must occur within 30 days of Defendant's receipt of the complaint, or other filed document, which establishes the existence of federal jurisdiction "to a substantial degree of specificity." Foster v.

Mutual Fire, Marine, & Inland Insurance Co., 986 F.2d 48, 53 (3d Cir. 1993). Summary remand of a removed action is appropriate if federal subject matter jurisdiction is lacking. 28 U.S.C. § 1447(c).

### **III. DISCUSSION.**

Plaintiff's complaint did not sufficiently inform Defendants that federal jurisdiction existed. Paragraph 51 of Plaintiff's complaint provides: "This harassment and termination constituted race discrimination, in violation of inter alia, the Pennsylvania Human Rights Act, 43 P.S. § 961 et al. as amended." Plaintiff claims that her use of "inter alia" encompasses a Title VII claim and sufficiently notified Defendants that federal question jurisdiction existed. Additionally, Plaintiff argues that it was Defendants' burden to request a more definitive statement by way of preliminary objections if the "inter alia" language was unclear. Connor v. Allegheny General Hosp., 461 A.2d 600, 602 n.3 (Pa. 1983).

I find Paragraph 51 insufficient to set forth a claim under Title VII. The "well-pleaded complaint rule" requires a federal claim to appear on the face of Plaintiff's complaint prior to removal. Joyce v. RJR Nabisco Holdings Corp., 126 F.3d 166, 171 (3d Cir. 1997); Dukes v. U.S. Healthcare, 57 F.3d 350, 353 (3d Cir. 1995), cert. denied, \_\_ U.S. \_\_ (1995). Plaintiff seeks to assert a federal claim in state court without giving

Defendants an opportunity to remove the action. This is not proper. Plaintiff must either assert her federal claim and face removal or forgo her federal claim entirely and remain in state court.

This Court is bound by the "well-pleaded complaint rule." To date, Plaintiff's well-pleaded complaint does not set forth a federal question. Plaintiff's only option is to seek leave amend her complaint in state court. If such an amendment is allowed, Defendants may again remove this action.\* Because this Court lacks subject matter jurisdiction this matter must be remanded to state court for further proceedings.

An Order follows.

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\* During a conference call on May 29, 1998 Counsel was given advance notice of this Court's decision. In the interest of judicial economy, Plaintiff's counsel was given the opportunity to withdraw its Motion to Remand and remain in federal court pursuant to Title VII but declined to do so at that time.

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Plaintiff,  
v.  
JENNY CRAIG INTERNATIONAL,  
LINDA DERBYSHIRE, and  
LORI SCHMIDT  
Defendant.

AND NOW, this 3rd day of June, 1998, upon consideration of Plaintiff Karen M. Shelton's Motion to Remand, and Defendants Jenny Craig International, Linda Derbyshire, and Lori Schmidt's Response thereto, it is hereby ORDERED that said Motion is GRANTED because Plaintiff has failed to plead a federal claim.

BY THE COURT:

Robert F. Kelly, J.